



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Raymond Corporation

File: B-224577

Date: January 8, 1987

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### DIGEST

1. Second low bidder whose required descriptive literature allegedly is defective is an interested party to protest that low bid was defective for the same reason.
2. Bidder's circling of individual model and certain options in commercial literature for forklifts and annotating the literature to specify compliance with certain salient characteristics is sufficient to demonstrate compliance with salient characteristics listed in the solicitation for the forklifts.
3. Where descriptive literature shows compliance with solicitation's salient characteristics as required by the solicitation, the failure of the literature to indicate which other options are being offered is immaterial since the literature does not indicate an exception to the solicitation's requirements.

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### DECISION

Raymond Corporation protests the award of a contract to Potomac Industrial Trucks, Inc. (Potomac) under invitation for bids (IFB) No. DE-FB01-86MA29716, issued by the Department of Energy for three types of forklift trucks. Potomac was awarded a contract for all three IFB items. The IFB required the submission of descriptive literature demonstrating, for evaluation purposes, compliance with salient characteristics specified in the IFB for each type of truck, and warned that the failure to provide the literature would require rejection of the bid. Raymond, which bid on only items 2 and 3, and offered prices higher than Potomac's, basically contends that for those two items Potomac's bid included commercial

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type of truck without specifying the alternative that complied with the IFB.

Initially, the contracting agency argues that Raymond is not an interested party to protest principally because its descriptive literature failed to address several salient characteristics of the items for which it bid, rendering the bid nonresponsive. Although a nonresponsive bidder in many cases is not an interested party as required by 4 C.F.R. § 21.1(a) (1986), we have held that a protester whose bid is viewed as nonresponsive should have the opportunity to have its complaint heard when the complaint is that a competitor's bid should also be viewed as nonresponsive for the same reason. See Dillingham Ship Repair, B-218655, Aug. 14, 1985, 85-2 CPD ¶ 167. Since Raymond is arguing that Potomac's descriptive literature also was defective, we think it is appropriate to consider the merits of the protest.

The specifications for item 2 required a stand-up rider, narrow aisle reaching and tiering truck with several salient characteristics, including a requirement that the truck have a lifting capacity of 4,000 pounds. The specifications for item 3 required a counter balance forklift truck that also has a 4,000 pound capacity, is battery operated and meets listed salient characteristics.

For item 2, Potomac offered the Crown model 45RRTT and submitted Crown's commercial descriptive literature describing its truck models having a capacity of 3500 and 4500 pounds. The literature included several options for each model. In the literature, Potomac circled the model number 45RRTT, having a 4500-pound capacity, and indicated compliance with the IFB's salient characteristics by either circling the appropriate available options printed in Crown's commercial literature or annotating the literature to specify that the characteristics would be satisfied. For item 3, Potomac offered a Crown model 40RCTT and submitted Crown's commercial literature for that model. Again, Potomac indicated compliance with the salient characteristics by circling appropriate options or annotating the literature.

Regarding item 2, Raymond contends that Potomac's descriptive literature did not sufficiently specify which model was being offered or what options were included. Pointing out that Crown's commercial literature contained a warning that capacity may be subject to derating depending upon the combination of lift height, straddle width and battery compartment size, Raymond further contends that Potomac failed to specify which configuration it was offering or that the

offered configuration would have the required 4000-pound capacity. Regarding both items 2 and 3, Raymond cites language in Crown's literature stating that dimensions and performance data may vary due to manufacturing tolerances, and argues that this language limits Potomac's obligation to satisfy the salient characteristics. Lastly, in regard to item 3, Raymond notes that Crown's literature states that the lifting capacity will be reduced at lifting heights exceeding 154 inches while the salient characteristics specify a minimum capacity of 3200 pounds at a required lifting height of 190 inches.

We find that Potomac satisfied the IFB's descriptive literature requirement by circling the offered model number for item 2 and by indicating, either by circling available options in Crown's commercial literature or annotating the literature, that each salient characteristic would be satisfied. The failure to indicate precisely which other options were being offered was immaterial since the literature satisfied the salient characteristics and did not otherwise indicate that Potomac was taking exception to a requirement of the IFB. See Heyl & Patterson, B-220369, Feb. 5, 1986, 86-1 C.P.D. ¶ 130.

The statement in Crown's literature that capacity may be subject to derating depending upon the height, straddle width and battery compartment size did not affect the lifting capacity of Potomac's offered truck for item 2 since it was clear that the offered truck was at the low end of the range of available lifting heights and battery compartment sizes. Further, Potomac annotated the literature to specify a 4500-pound capacity at full elevation. The statement in Crown's literature that dimensions and performance data may vary due to manufacturing tolerances also did not mean that the offered items might deviate from the salient characteristics, only that in Crown's manufacturing process slight deviations from the exact dimensions listed in the commercial literature could take place in any individual vehicle. Through its circling and annotations, Potomac clearly manifested its intention to provide only vehicles that fully satisfied the IFB's requirements, and in this regard, Potomac crossed out language in the commercial literature stating that specifications were subject to change without notice.

As regards item 3 and the statement in Crown's literature that the lifting capacity will be reduced at heights exceeding 154 inches, the statement merely explained why the literature showed a lifting capacity of 3750 pounds at

190 inches for its 4000-pound capacity truck. Since an IFB salient characteristic required only a lifting capacity of 3200 pounds at that height, the literature satisfied the salient characteristics.

Based on the above, it is clear that Raymond's protest regarding the adequacy of Potomac's descriptive literature lacks merit. The protest is denied.

*for* *Seymour E. Evers*  
Harry R. Van Cleve  
General Counsel